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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/319,649	06/10/1999	TOMIHISA KAMADA	Y-163	3408

7590 01/30/2004

DELLETT & WALTERS
310 S W FOURTH AVENUE
SUITE 1101
PORTLAND, OR 97204

EXAMINER

TRAN, HAI V

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 01/30/2004

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/319,649

Applicant(s)

KAMADA ET AL.

Examiner

Hai Tran

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-25.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant argues, "There is no indication within Herz of whether the act of simply selecting a program for as short period of, for example just one minute, qualifies as "watching" it... It does not teach that the information having at least one of a start view time, an end view time, and a difference between the start and end view time is transmitted."

In response, the Examiner respectfully disagrees with Applicant because Applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this instant, the rejection is based on the combination of Herz in view of Welsh and further in view of Williams (see Office Action). In the Examiner Office Action, paper 17 (Final Rejection), the Examiner indicates that Herz discloses obtaining audience data (Col. 26, lines 57-Col. 27, lines 5; the customer profile is adjusted according to user selection of video program watched), which includes viewed channel information and viewed time information of TV based on result of the detecting of the viewed channel (Col. 4, lines 59-Col. 5, lines 4); and obtaining at least a program ID (particular video descriptive; Col. 4, lines 65+) of a viewed program from the TV program table data, by comparing the audience data (user profile) with the TV program table data (Col. 26, lines 57-Col. 27, lines 5) and Herz does not clearly disclose "Detecting times at which a viewing of the channel is started and ended"; "Identifying a program ID of currently viewed program from the TV program table data by comparing the detected channel and current time with the channel and time information of the TV program table data". To cure this deficiency, Welsh teaches detecting times at which a viewing of the channel is started and ended (the household system must detect times at which a viewing of the channel is started and ended so the Central computer could maintain a database of collected event from each household that include times (Fig. 7, el. 208) at which a viewing of the channel is started and ended; specifically Col. 6, lines 5-15 and Col. 14, lines 32-40);

Applicant further argues, "...Herz takes the opportunity of making use of the Internet to perform any functions as needed by a user. This is proposed by applicants, not Herz. Herz doesn't show or suggest this."

In response, the Examiner respectfully disagrees with Applicant and cites again Herz (e.g., for personalized newspapers, or multimedia information which can be downloaded over networks such as the Internet; Col. 51, lines 5-8). Thus, Herz meets the claimed limitation by taking the opportunity of using/making use of the Internet, i.e. "...to download multimedia information". By downloading the multimedia through Internet, Herz clearly suggests that the users must access/connect to the Internet in order to perform the function of downloading.

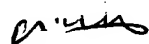
Applicant further argues "...at column 4 line 59 through column 5 line 4, Herz shows obtaining viewed channel information and obtaining a program ID of a viewed program. Such concept is not taught in this portion of Herz."

In response, the Examiner respectfully disagrees because Herz does show obtaining viewed channel information and obtaining a program ID of a viewed program (see Col. 6, lines 5-15 and lines 25-29; Col. 14, lines 30-40).

As to argument "the term 'detect' in this context of applicants' claims is different from the context of Welsh...", Applicant appears to contradict himself regarding the meaning of the term 'detect' because in Applicant's earlier remarks (Amendment 05/02/03), Applicant admits that "... a decoder (18) simply detect it, as clearly described in Col. 5, lines 47-59 of the Welsh reference" and the Examiner cite Welsh's Col. 5, lines 47-48 to indicate to Applicant that Welsh's decoder (18) does not simply detect it, as applicant suggested but Welsh's decoder (18) does detect it. Welsh (Col. 5, lines 61-63) further states "each time a character string is produced by the decoder 18, the previously comparison procedure takes place" in which is interpreted as, each time Welsh's system detects a string, the decoder (18) produces it or each time the decoder (18) detects the string, the decoder (18) produces it; Therefore, Welsh meets Applicant's context in the term "detect" as claimed.

Applicant further argues, "it is clear from applicants' specification that this relates to "over the air" broadcasts, not cable television..."

In response, it is noted that the features upon which applicant relies (i.e., over the air) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this instant, Herz, Welsh and Williams do broadcast TV programs either using CATV network and/or over the air (see Williams' Fig. 1, elements 124, 126 and 134).


VICTOR R. KOSTAK
PRIMARY EXAMINER